''(iii) an automotive dismantler or scrap dealer (as defined by the Administrator);

''(iv) a manufacturer of lead-acid batteries of the same general type as the type delivered; and

''(v) a collection entity, program, or facility designated by a State to accept spent lead-acid batteries.

''(3) BY WHOLESALERS, AUTOMOTIVE DISMANTLERS, AND COLLECTION PROGRAMS, ENTITIES AND FACILITIES.—

''(A) IN GENERAL.—A person that sells lead-acid batteries at wholesale, an automotive dismantler, and a collection entity, program, or facility designated by a State to accept spent lead-acid batteries shall return a spent lead-acid battery by delivering the battery to 1 of the authorized recipients described in subparagraph (B).

''(B) AUTHORIZED RECIPIENTS.—The authorized recipients described in this subparagraph are—

''(i) a lead smelter regulated by a State or the Administrator under this Act or the Clean Air Act (42 U.S.C. 7401 et seq.); and

''(ii) a manufacturer of lead-acid batteries of the same general type as the type delivered.

''(4) BY MANUFACTURERS.—

''(A) IN GENERAL.—A person that manufactures lead-acid batteries shall return a spent lead-acid battery by delivering the battery to the authorized recipient described in subparagraph (B).

''(B) AUTHORIZED RECIPIENT.—The authorized recipient described in this subparagraph is a lead smelter regulated by a State or the Administrator under this Act or the Clean Air Act (42 U.S.C. 7401 et seq.).

''(d) COLLECTION REQUIREMENTS.—

''(1) RETAILERS.—

''(A) IN GENERAL.—A person that sells or offers for sale lead-acid batteries at retail shall accept spent lead-acid batteries of the same general type as the batteries sold in a quantity that is approximately equal to the number of batteries sold.

''(B) EXEMPTION.—Subparagraph (A) shall not apply to a retailer that sells not more than 5 lead-acid batteries per month on average over a calendar year, if a collection entity, program, or facility is in operation for the collection of spent lead-acid batteries in the locality of the retailer.

''(2) WHOLESALERS.—

''(A) IN GENERAL.—A person that sells or offers for sale lead-acid batteries at wholesale shall accept spent lead-acid batteries of the same general type as the batteries sold and in a quantity approximately equal to the number of batteries sold.

''(B) ACCEPTANCE FROM RETAILERS.—A wholesaler that sells or offers for sale lead-acid batteries to a retailer shall provide for the removal of spent lead-acid batteries at the place of business of the retailer—

''(i) not later than 90 days after the retailer notifies the wholesaler of the existence of the spent lead-acid batteries for removal; or

''(ii) if the quantity of batteries to be removed is less than 5, not later than 180 days after notification.

''(3) MANUFACTURERS.—A person that manufactures lead-acid batteries shall accept spent lead-acid batteries of the same general type as the batteries sold and in a quantity approximately equal to the number of batteries sold.

''(e) NOTICE REQUIREMENTS.—

''(1) POSTED NOTICE BY RETAILERS.—A person that sells or offers for sale lead-acid batteries at retail shall post a written notice that—

''(A) is clearly visible in a public area of the establishment in which the lead-acid batteries are sold or offered for sale;

''(B) is at least 8½ inches by 11 inches in size; and

''(C) contains the following text:

''(i) It is illegal to throw away a motor vehicle battery or other lead-acid battery.

''(ii) Recycle your used lead-acid batteries.

''(iii) Federal (or State) law requires battery retailers to accept used lead-acid batteries for recycling when a lead-acid battery is purchased.

''(2) STATE REQUIREMENTS.—Nothing in paragraph (1) shall be construed to prohibit a State from requiring the posting of substantially similar notice in lieu of that required under paragraph (1).

''(3) LABELING.—

''(A) IN GENERAL.—Each lead-acid battery manufactured on or after the date that is 1 year after the date of enactment of this Act, whether produced domestically or imported, shall bear a label comprised of—

''(i) the 3 chasing arrow recycling symbol; and

''(ii) immediately adjacent to the recycling symbol, the words 'LEAD', 'RETURN', 'RECYCLE'.

''(B) INTERNATIONAL SYMBOLS.—

''(i) APPLICATION.—On application by a person subject to the labeling requirements of this paragraph, the Administrator shall certify that a different label meets the requirements of this paragraph if the label conforms with a recognized international standard that is consistent with the overall purposes of this section.

''(ii) FAILURE TO ACT.—If the Administrator fails to act on an application under clause (i) within 120 days after the date on which the application is filed, the Administrator shall be considered to have certified that the label proposed in the application meets the requirements of this paragraph.

''(4) UNIFORMITY.—No State or political subdivision of a State may enforce any labeling requirement intended to communicate information about the recyclability of lead-acid batteries that is not identical to the requirements contained in paragraph (3).

''(5) RECYCLING INFORMATION.—Nothing in this subsection shall be construed to prohibit the display on a label of a lead-acid battery of any other information intended by the manufacturer to encourage recycling or warn consumers of the potential hazards associated with lead-acid batteries.

''(f) PUBLICATION OF NOTICE.—Not later than 180 days after the date of enactment of this section, the Administrator shall publish in the Federal Register a notice of the requirements of this section and such other related information as the Administrator determines to be appropriate.

''(g) EXPORT FOR PURPOSES OF RECYCLING.—Notwithstanding any other provision of this section, a person may export a spent lead-acid battery for the purposes of recycling.

''(h) ENFORCEMENT.—The Administrator may issue a warning or citation to any person that fails to comply with the requirements of this section.

''(i) CIVIL PENALTY.—

''(1) IN GENERAL.—When on the basis of any information the Administrator determines that a person is in violation of this section, the Administrator—

''(A) in the case of a willful violation, may issue an order assessing a civil penalty of not more than $1,000 for each violation and requiring compliance immediately or within a reasonable specified time period, or both; or

''(B) in the case of any violation, may commence a civil action in the United States district court in which the violation occurred for appropriate relief, including a temporary or permanent injunction.

''(2) CONTENTS OF ORDER.—An order under paragraph (1) shall State with reasonable specificity the nature of the violation.

''(3) CONSIDERATIONS.—In assessing a civil penalty under paragraph (1), the Administrator shall take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.

''(4) FINALITY OF ORDER; REQUEST FOR HEARING.—An order under paragraph (1) shall become final unless, not later than 30 days after the date on which the order is served, a person named in the order requests a hearing on the record.

''(5) HEARING.—On receiving a request under paragraph (4), the Administrator shall promptly conduct a hearing on the record.

''(6) SUBPOENA POWER.—In connection with any hearing on the record under this subsection, the Administrator may issue subpoenas for the attendance and testimony of witnesses and for the production of relevant papers, books, and documents.

''(7) CONTINUED VIOLATION AFTER EXPIRATION OF PERIOD FOR COMPLIANCE.—If a violator fails to take corrective action within the time specified in an order under paragraph (1), the Administrator may assess a civil penalty of not more than $1,000 for the continued noncompliance with the order.''.●

By Mr. LIEBERMAN:

S. 2160. A billto provide for alternative procedures for achieving superior environmental performance, and for other purposes; to the Committee on Environment and Public Works.

THE INNOVATIVE COMPLIANCE ACT

● Mr. LIEBERMAN. Mr. President, I am pleased to introduce today the Innovative Compliance Act of 1996. Title I of this legislation authorizes the Environmental Protection Agency to approve a demonstration program allowing companies who show superior environmental performance to use flexible methods of achieving environmental goals. Title II of the legislation requires the EPA, when developing a new program to control a pollutant to consider, where appropriate, basing the regulatory scheme on market-based trading programs. The legislation builds on President Clinton's project XL which stands for excellence and leadership, and on the successful market-based program for controlling acid rain established under the Clean Air Act Amendments of 1990.

Mr. President, I am introducing this bill at the end of this session in the hope that it will lead to a continued dialog among interested parties on the best way to implement these two programs. I view this bill as an initial draft, discussion draft and welcome all proposals and suggestions on how to alter and improve it. I hope to resubmit the bill reflecting suggestions made over the next few months early next session.

This Congress has been marked by debate about the future of Government's role in environmental protection. At times, it appeared that the bipartisan support of environmental laws and regulation that has evolved over the past three decades was at serious risk. Efforts to undermine our environmental laws initially had support from some in this Congress, despite the absence of any public demand for retrenchment on the environmental

front. Those efforts have been stemmed.

In fact, our laws and regulations have performed remarkably well in improving the quality of America's environment. As Gregg Easterbrook has pointed out, environmental protection is probably the single greatest success story of American Government in the period since World War II.

In many cases, however, we need to do more to provide the level of environmental protection most Americans expect from Government. For example, 62 million Americans still live in neighborhoods where the air does not meet Federal health-based standards. Forty percent of our rivers and lakes still do not fully meet water quality standards. The number of people suffering from asthma has increased 40 percent in the past decade. In some communities, it has reached epidemic proportions, especially among children. Health advisories for eating fish increased by 14 percent between 1994 and 1995. In light of these serious problems, there is clearly a need to improve protection of our environment. But there is just as clearly a need to review our methods of environmental protection in order to find better, more efficient, more innovative and fairer ways to achieve greater progress toward meeting our environmental goals. In some cases, the traditional approaches to environmental protection have hindered companies from developing more innovative approaches, such as pollution prevention, that can result in larger benefits for the environment.

While combining these two goals may appear illusive, a significant consensus has emerged that alternative compliance and market-based trading programs can form the basis for a new approach to environmental protection that will achieve superior results at less cost while encouraging innovation. This consensus can be seen, for example, in the work of the President's Council on Sustainable Development which brought together leaders from government, business, environmental, civil rights, labor and Native American organizations in an effort to achieve consensus national environmental, economic and social goals. The Council's report supports both these approaches. The Aspen Institute also undertook a 3-year effort to reach consensus among a wide group of divergent interests on an alternative path to achieving a cleaner, cheaper way to protect and enhance the environment. This legislation seeks to adopt many of the principles agreed to by the participants in the Aspen process.

Title I of this bill establishes an alternative compliance program at EPA. The Administrator of EPA is authorized to consider up to 50 petitions from companies seeking modifications or waivers from environmental rules and to grant petitions if certain criteria are met. The basic premise of this title is that superior environmental performance can be achieved by allowing environmental managers at companies, in partnership with an active group of community stakeholders, to devise their own means of reaching environmental goals. This approach recognizes that the regulated industry is now in an excellent position to experiment and decide what approaches will yield better environmental results than can be achieved under existing or reasonably foreseeable regulation. Allowing flexibility can substantially reduce compliance costs and make industries more competitive, provide for much greater community involvement in the decisions of their neighboring industrial plants, foster more cooperative partnerships, and encourage greater innovation in meeting environmental goals.

Let me discuss a few important provisions of the bill.

First, the Administrator may only grant flexibility if a company demonstrates that it will achieve better overall environmental results under the alternative compliance strategy than would be achieved under existing or reasonably anticipated rules. The bill establishes benchmarks from which to determine whether better environmental results will be achieved under the alternative compliance strategies. For example, for existing facilities, the benchmark generally will be either the level of releases into the environment actually being achieved by the facility or the level of releases allowed under the applicable regulatory requirements and reasonably foreseeable future requirements, whichever is lower. The bill also sets forth benchmarks for existing facilities being modified to significantly expand production and for new facilities, section 105(b). In addition to determining if the benchmark is met, the Administrator must find, based on a well-accepted, documented methodology, that the alternative compliance strategy will not result in a significant increase in the risk of adverse effects or shift any significant risks of adverse effects, to the health of an individual, population, or natural resource affected by the strategy.

There are a number of different types of alternative compliance strategies. For example, in some cases, a facility may demonstrate better overall environmental results by showing a reduction in releases of all pollutants and, in exchange, seek a modification of reporting or other paperwork requirements. In other cases, a facility may demonstrate better overall environmental results by showing a reduction in releases of all pollutants, but seek modification of a rule to allow for flexibility with respect to emission levels at different sources within the facility. There may be some cases where the alternative compliance strategy would result in very large decreases in one pollutant while resulting in a very small increase in another pollutant. But it is particularly important that the Administrator only approve such a strategy upon a finding, based on a well-accepted, documented methodology, that there will be no significant increase in the risk of adverse effects resulting from the strategy.

As I've described, before granting a petition, the Administrator must find that certain quantitative requirements for measuring better environmental performance have been met by the petitioner. After making this determination, the Administrator may also consider other significant environmental, economic and social benefits that the petitioner offers in the petition, section 105(b)(2).

Under the bill, the alternative compliance strategy must provide accountability, monitoring, enforceability and public access to information at least equal to that provided by the rule that is being modified or waived. A related and very important requirement is that adequate information must be made accessible so that any member of the public can determine if a company is complying with an alternative compliance agreement, sections 105(b) (4), (5). Other requirements that must be met by the petitioner are set forth in section 105.

Another critical provision of the bill, section 104 establishes that any company submitting a petition must undertake a stakeholder participation process and work to ensure that adequate resources exist to make the process effective. Involving citizens, particularly members of the local community, in the development of an alternative compliance strategy is absolutely critical. Companies that have formulated successful alternative compliance strategies have told me that without the support of the local community these strategies simply will not work. Empowerment of the local community through stakeholder processes will help build trust and make implementation of the agreement easier. It is also important that State and local regulators be part of the stakeholder process.

Under the bill, a more structured stakeholder process is set out for more complex agreements—those involving more than one pollutant or one medium. The stakeholders have a greater decisional role in more complex agreements. Nevertheless, in all cases, stakeholder acceptance will be critical to success of the alternative compliance strategy.

Title II of the legislation seeks to build on the successful acid rain program established under the Clean Air Act Amendments of 1990. It requires that prior to promulgating a new program for controlling emissions or discharges of a pollutant, EPA consider, where appropriate, the adoption of a market-based trading program. The program would include a cap on total emissions or discharges of the pollutant. Each source of a pollutant would be required to meet an emission or discharge limit based on a share of the total limit on emissions or discharges

allowed from all sources. Sources could meet their performance objective though a variety of methods, including by acquiring excess emission or discharge reductions from other sources that have achieved levels of performance beyond that required to meet their discharge or emission limits.

The bill recognizes that trading programs are not appropriate in every case. Trading programs should only be implemented where they would result in levels of emissions or discharges greater than those that would be achieved under alternative programs. Additionally, there are circumstances where a trading program is not appropriate because the environmental or human health reasons for which the pollutant is regulated can only be addressed through source-specific emission controls.

As I have mentioned, this title is intended to build on the success of the acid rain program of the Clean Air Act. That program set a cap on the total amount of emissions of sulfur dioxide that electric utilities can emit and allows flexibility for individual units to select their own method of compliance. The mechanism for allocating reductions is a comprehensive permit and emission allowance system. An allowance is a limited authorization to emit a ton of sulfur dioxide. Facilities receive allowance based on a specific formula contained in the law. Allowances may be traded or banked for future use or sale. Thirty days after the end of the year, each utility must have a number of allowances equal to the tonnage actually emitted during the previous year. Allowances may be purchased to cover each unit's emissions for the year. The system rewards utilities that go beyond the law's requirement by enabling them to earn profits from the sale of their extra allowances.

The program is being implemented in two phases: Phase I began in l995 and will last until 1999. It covers 445 utility units.

In July, EPA issued a report on the compliance results of phase I. The results are extremely impressive and far exceed the expectations of those of us involved in the drafting of the legislation—both in terms of emission reductions achieved and cost of those reductions.

First, EPA reports that the compliance level for all the units under Phase I was l00 percent. Second, EPA reports that the emissions for these units was 39 percent below what the law allowed for l995. Third, EPA and the U.S. Geological Survey report environmental success—reductions in sulfur dioxide emissions have resulted in rainfall being less acidic in l995 as a result of the first year of the acid rain program. The U.S. Geological Survey study reports a 10–25 percent drop in rainfall acidity, particularly at some sites located in the mid-west, northeast and mid-Atlantic regions. Fourth, the cost of reducing a ton of sulfur dioxide continues to decline. In just two years, allowance prices have dropped from $150 a ton to less than $80 a ton. At the time of enactment of the Clean Air Act Amendments, it was estimated that the cost of an allowance would be $500 to $600 a ton. The General Accounting Office has estimated that $2 to $3 billion will be saved with the implementation of the acid rain program through its allowance trading program.

In other words, the acid rain program has achieved greater reductions than anticipated at far lower costs than anticipated. This is a win-win—for the environment and the regulated community. The legislation I am introducing today would require EPA, where appropriate, to consider basing future environmental programs on the same type of successful program established for acid rain.

Mr. President, I ask unanimous consent that the full text of the legislation be included in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2160

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Innovative Compliance Act of 1996''.

SEC. 2. FINDINGS.

Congress finds that—

(1) superior environmental performance can be achieved in some cases by granting regulated industries the flexibility to develop alternative strategies for achieving environmental results;

(2) alternative strategies also have the potential to—

(A) substantially reduce compliance costs;

(B) foster cooperative partnerships among industry, government, and local communities;

(C) encourage greater innovation and greater pollution prevention in meeting environmental goals; and

(D) increase the involvement of members of the local community and citizens in decisions relating to the approach taken by a facility for achieving environmental goals; and

(3) the acid deposition control program established under title IV of the Clean Air Act (42 U.S.C. 7651 et seq.), the stratospheric ozone protection program established under title VI of the Act (42 U.S.C. 7671 et seq.), and other initiatives demonstrate that properly designed market-based approaches can achieve greater environmental performance and encourage innovation while saving money for regulated industries and government when compared with more traditional control approaches.

TITLE I—ALTERNATIVE STRATEGIES FOR ACHIEVING SUPERIOR ENVIRONMENTAL PERFORMANCE

SEC. 101. DEFINITIONS.

In this title:

(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the Environmental Protection Agency.

(2) AGENCY.—The term ''Agency'' means the Environmental Protection Agency.

(3) AGENCY RULE.—The term ''Agency rule''—

(A) means a rule (as defined in section 551 of title 5, United States Code) issued by the Agency; but

(B) does not include any emissions reduction requirement of any rule under title IV of the Clean Air Act (relating to acid deposition control) (42 U.S.C. 7651 et seq.) or any other requirement pursuant to any other enforceable trading program.

SEC. 102. PETITION.

A person that owns or operates a facility that is subject to an Agency rule may petition the Administrator to modify or waive the Agency rule with respect to the facility and to enter into an enforceable compliance agreement with the person establishing an alternative compliance strategy with respect to the facility in accordance with this title.

SEC. 103. CONTENTS OF PETITION.

A petition under section 102 shall—

(1) identify the Agency rule for which the modification or waiver is sought and the alternative compliance strategy that is proposed;

(2) identify the facility to which the modification or waiver would pertain; and

(3) demonstrate that the alternative compliance strategy meets the requirements of section 105.

SEC. 104. STAKEHOLDER PARTICIPATION PROCESS.

(a) IN GENERAL.—A person that submits a petition under section 102 shall—

(1) undertake a stakeholder participation process in accordance with this section; and

(2) work to ensure that there is adequate technical support for an effective process.

(b) REQUIREMENTS.—The stakeholder participation process shall—

(1) be balanced and representative of interests likely to be affected by the proposed alternative compliance strategy;

(2) ensure options for public access to the process and make publicly available the proceedings of the stakeholder participation process, except with respect to confidential information of the petitioner;

(3) establish procedures for conducting the stakeholder participation process, including open meetings as appropriate; and

(4) if necessary, provide for appropriate agreements to protect confidential information of the petitioner proposing the alternative compliance strategy.

(c) PUBLIC NOTICE OF PETITION.—A person that submits a petition under section 102 shall provide effective public notice of the intent of the petitioner to pursue the alternative compliance strategy to—

(1) community groups;

(2) environmental groups;

(3) potentially affected employees;

(4) persons living near the facility; and

(5) Federal, State, and local government agencies in areas that may be affected by the alternative compliance strategy, including areas that may be affected by transport of a pollutant.

(d) PARTICIPATION.—

(1) IN GENERAL.—Any person may participate in the stakeholder participation process, except that a person that has a business interest in competition with that of the petitioner may be excluded.

(2) GOVERNMENT OFFICIALS.—Federal, State, and local government officials in areas that may be affected by the proposed alternative compliance strategy may participate in the stakeholder participation process.

(3) LIMITATION ON NUMBER OF PARTICIPANTS.—In order to provide for a manageable stakeholder process, a petitioner may propose a limit on the number of stakeholder participants if the petitioner demonstrates to the satisfaction of the Administrator that the stakeholder participants adequately represent, in a balanced manner, the full range of interests (excluding competitive business interests) that may be affected by the alternative compliance strategy.

(e) MODIFICATION OR WAIVER OF PROCESS.—

(1) REQUEST.—A petitioner may request that the Administrator modify or waive 1 or more of the requirements of this section.

(2) CRITERIA.—The Administrator may grant a request under paragraph (1) if, after notice and opportunity for public comment, the Administrator determines that—

(A) there is insufficient interest in convening stakeholder participants; and

(B) the stakeholder participation process would not be useful in view of the routine or noncontroversial nature of the proposal.

SEC. 105. REQUIREMENTS FOR APPROVAL.

(a) IN GENERAL.—The Administrator may approve a petition under section 107 if the Administrator determines that—

(1) the facility is in compliance with all applicable environmental and public health regulations and other requirements;

(2) the alternative compliance strategy will achieve better overall environmental results than would be achieved under the current regulatory requirements and any reasonably anticipated future regulatory requirements;

(3) the alternative compliance strategy will not result in adverse cross-media impacts;

(4) the alternative compliance strategy provides accountability, monitoring, enforceability, and public and Agency access to information at least equal to that provided under the Agency rule that is modified or waived;

(5) the alternative compliance strategy provides for access to information adequate to enable verification of environmental performance by any interested person;

(6) the alternative compliance strategy ensures worker health and safety;

(7) no person or population would be subjected to unjust or disproportionate environmental impacts as a result of implementation of the alternative compliance strategy;

(8) the alternative compliance strategy will not result in transport of a pollutant to another area;

(9) the alternative compliance strategy will not result in a violation of a national environmental or health standard;

(10) all State and local environmental agencies in areas that may be affected by the alternative compliance strategy support the petition;

(11) the stakeholder participation process met the requirements of section 104;

(12) as determined on the basis of a well accepted, documented methodology, the alternative compliance strategy will not result in any significant increase in the risks of adverse effects, or shift any significant risks of adverse effects, to the health of an individual, population, or natural resource affected by the alternative compliance strategy;

(13) the agreement is for a specified term not to exceed 10 years; and

(14) in the case of a petition involving more than 1 pollutant or more than 1 medium, a broad consensus of the stakeholder participants has approved the alternative compliance strategy.

(b) BETTER OVERALL RESULTS.—

(1) CRITERIA.—For the purposes of subsection (a)(2), the achievement of better overall environmental results shall be measured as follows:

(A) For existing facilities, the benchmark shall be the lesser of—

(i) the level of releases of pollutants into the environment being achieved prior to the date of submission of the petition; or

(ii) the level of releases of pollutants into the environment allowed under the current regulatory requirements and any reasonably anticipated future regulatory requirements;

except that the Administrator may modify the benchmark on a case-by-case basis for a facility that has reduced releases significantly below applicable regulatory requirements prior to the date of submission of the petition.

(B) For existing facilities being modified to significantly expand production, the benchmark shall be the lesser of—

(i) the level of releases of pollutants into the environment being achieved (on a per unit of production basis) prior to the date of submission of the petition; or

(ii) the level of releases of pollutants into the environment allowed under the current regulatory requirements and any reasonably anticipated future regulatory requirements on a per unit of production basis.

(C) For new facilities, the benchmark shall be based on the lesser of—

(i) the level of releases of pollutants into the environment allowed under the current regulatory requirements and any reasonably anticipated future regulatory requirements; or

(ii) the level of releases of pollutants into the environment being achieved by the best performance practices of similarly situated facilities.

(2) OTHER CONSIDERATIONS.—In addition to determining that the criteria of paragraph (1) are met, the Administrator may consider other factors supporting superior environmental, social, and economic benefits set forth in the petition.

(c) OBJECTION BY STAKEHOLDER.—Notwithstanding subsection (a)(14), the Administrator shall deny a petition involving more than 1 pollutant or more than 1 medium if—

(1) 1 or more stakeholders object to the alternative compliance strategy; and

(2) the Administrator determines, based on the objection, any response to the objection, and all other relevant facts, that—

(A) the objection relates to any of the criteria stated in paragraphs (1) through (13) of subsection (a); and

(B) the objection has a clear and reasonable foundation.

SEC. 106. PRIORITY.

The Administrator shall give priority to petitions with alternative compliance strategies using pollution prevention approaches and to petitions submitted by persons with a strong record of outstanding environmental performance and worker health and safety protection.

SEC. 107. DETERMINATION OF PETITION.

Not later than 180 days after receiving a petition under section 102, the Administrator, subject to section 112, shall—

(1) propose to approve the petition and enter into an enforceable compliance agreement; or

(2) submit a written explanation to the petitioner of the basis for determining that the requirements of section 105 are not met.

SEC. 108. PUBLIC NOTICE OF INTENT TO APPROVE PETITION.

The Administrator shall publish notice of the intent to approve a petition in the Federal Register at least 60 days prior to approving the petition.

SEC. 109. ENFORCEABILITY.

(a) IN GENERAL.—If the Administrator and a person enter into an enforceable compliance agreement under this title, the person shall comply with the agreement in lieu of any Agency rule modified or waived by the agreement, and compliance with the agreement shall be considered to be compliance with the Agency rule for all purposes.

(b) SPECIFICATION OF AGENCY RULES TO WHICH AGREEMENT APPLIES.—An agreement under subsection (a) shall specify each Agency rule that is modified or waived.

SEC. 110. PRELIMINARY COMMENT PROCESS.

The Administrator shall establish a process for providing preliminary comments by the Administrator on a petition.

SEC. 111. JUDICIAL REVIEW.

A decision by the Administrator to approve or disapprove a petition under this title shall constitute final agency action and shall be subject to judicial review.

SEC. 112. LIMITATION ON PETITIONS CONSIDERED.

The Administrator shall not consider more than 50 petitions for alternative compliance strategies unless—

(1) a petitioner demonstrates that, because the petitioner is situated in a position that is virtually identical to that of another person that has been granted approval of a petition, the petitioner may be at a substantial competitive disadvantage if the petition is not considered; or

(2) at the sole discretion of the Administrator and taking into account the full range of the Agency's obligations, the Administrator determines that adequate resources exist to evaluate a greater number of petitions and to oversee implementation of a greater number of enforceable compliance agreements.

SEC. 113. SMALL BUSINESS PROPOSALS.

The Administrator shall establish a program to facilitate development of proposals for alternative means of compliance from groups of small businesses and to provide expedited review of proposals for alternative means of compliance from groups of small businesses.

SEC. 114. REPORT AND EVALUATION.

Not later than 3 years after the date of enactment of this Act, the Administrator shall submit a report to Congress on the aggregate effect of the enforceable compliance agreements entered into under this title, including—

(1) the number and characteristics of the agreements;

(2) estimates of the environmental and public health benefits, including any reduction in quantities or types of emissions and wastes generated;

(3) estimates of the effect on compliance costs and jobs creation;

(4) the degree and nature of public participation and accountability;

(5) the incidence of noncompliance with the agreements entered into under this title compared to the incidence of noncompliance with relevant Agency rules by similarly situated facilities;

(6) conclusions on the functioning of stakeholder participation processes; and

(7) recommendations for legislative action.

SEC. 115. SAVINGS CLAUSE.

A decision by the Administrator to enter into an enforceable compliance agreement under this title shall not create any obligation of the Agency to modify any Agency rule insofar as the rule applies to any facility other than the facility subject to the enforceable compliance agreement. Nothing in this title shall affect the ability of the Administrator to enter into or carry out enforceable alternative compliance agreements under other law.

SEC. 116. COMPUTER ACCESS.

The Administrator shall establish, and provide on-line computer access to, a national repository of enforceable compliance agreements entered into under this title.

SEC. 117. FUNDING.

(a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Agency to carry out this title such sums as are necessary for fiscal years 1997 through 2000.

(b) AUTHORIZATION OF FEES.—

(1) IN GENERAL.—The Administrator may assess reasonable fees for consideration of petitions.

(2) OFFSET.—Fees assessed under paragraph (1) shall offset the expenses incurred by the

Administrator and may be used only for processing, administering, implementing, and enforcing enforceable compliance agreements.

(3) OTHER FEES.—Fees assessed under this subsection shall be collected in lieu of fees associated with otherwise applicable rules or requirements modified by an enforceable compliance agreement.

(4) WAIVER.—The Administrator may waive any fees under this subsection for any proposal for an alternative means of compliance from a small entity (as defined under section 601 of title 5, United States Code) or group of small entities.

TITLE II—ENVIRONMENTAL MARKET-BASED STRATEGIES

SEC. 201. CONSIDERATION OF MARKET-BASED MECHANISMS.

Before issuing a rule establishing a new program intended to limit the discharge or emission of a pollutant into the environment, the Administrator of the Environmental Protection Agency shall, in appropriate circumstances, consider including market-based mechanisms in the design and implementation of the program.

SEC. 202. MARKET-BASED MECHANISMS.

(a) IN GENERAL.—Subject to subsection (b), a market-based mechanism shall include—

(1) the imposition, on each regulated person, of express legal accountability for an explicit performance objective expressed as a quantity of actual discharges or emissions (and each such person's emissions or discharge limit shall represent a share of a total limit on emissions or discharges from all sources affected by the rule); and

(2) the authorization of the regulated person to comply with the requirements described in paragraph (1) by transferring or acquiring increments of emissions or discharge reductions, which shall represent reductions in emissions or discharges in excess of those required to be made by a regulated entity to meet its emissions or discharge limits.

(b) OTHER APPROPRIATE FACTORS.—

(1) IN GENERAL.—If the Administrator of the Environmental Protection Agency determines that a program with the elements specified in subsection (a) is not appropriate, the Administrator may include in a market-based mechanism a method by which a regulated person subject to emissions or discharge limits that are not expressed as a quantity of total emissions or discharges may—

(A) elect to meet the applicable emissions or discharge limits by limiting the person's total emissions or discharges to a specified quantity that corresponds to the regulated person's initial emissions or discharge limits; and

(B) achieve compliance with the emissions or discharge limits established under subparagraph (A) by acquiring or transferring increments of emissions or discharge reductions.

(2) INCREMENTAL REDUCTIONS.—Subject to paragraph (3), increments described in paragraph (1)(B) shall—

(A) represent reductions in emissions or discharges in excess of reductions required to be made by a regulated entity to meet its emissions or discharge limits; and

(B) be permanent, enforceable, and nondiscrete.

(3) EXCLUSION AS PART OF MECHANISM.—A rule permitting sources to acquire increments of emissions or discharge reductions when increments represent reductions that are discrete, nonpermanent, or discontinuous and are generated by sources the total emissions or discharges of which are not subject to a quantified emissions or discharge limitation requirement shall not be part of a market-based mechanism.

(c) LIMITATION.—Notwithstanding any other provision of this title, the Administrator of the Environmental Protection Agency may not consider market-based mechanisms for a program if—

(1) the program would result in levels of emissions or discharges of the pollutant regulated by the rule in excess of those that would be achieved under an alternative program, taking into account any incentives for generating and retaining excess reductions created by the opportunity to acquire and transfer increments of emissions or discharge reductions as a means of meeting the emissions or discharge limitation requirement applicable to the source; or

(2) the program pertains to a pollutant the properties of which are such that the environmental or human health purposes for which the pollutant is subject to regulation, taking into account any disproportionate or unjust environmental impacts to an individual, population, or natural resource, and any transport of the pollutant that may result, may be achieved only through the imposition of nontransferable source-specific emissions or discharge limitation requirements.●

ADDITIONAL COSPONSORS

S. 1911

At the request of Ms. MOSELEY-BRAUN, the name of the Senator from Washington [Mrs. MURRAY] was added as a consponsor of S. 1911, a bill to amend the Internal Revenue Code of 1986 to encourage economic development through the creation of additional empowerment zones and enterprise communities and to encourage the cleanup of contaminated brownfield sites.

S. 2123

At the request of Mr. BAUCUS, the names of the Senator from Hawaii [Mr. INOUYE], the Senator from West Virginia [Mr. ROCKEFELLER], the Senator from Nebraska [Mr. EXON], the Senator from Illinois [Ms. MOSELEY-BRAUN], and the Senator from New Hampshire [Mr. SMITH] were added as a consponsor of S. 2123, a bill to require the calculation of Federal-aid highway apportionments and allocations for fiscal year 1997 to be determined so that States experience no net effect from a credit to the Highway Trust Fund made in correction of an accounting error made in fiscal year 1994, and for other purposes.

S. 2150

At the request of Mr. MURKOWSKI, the name of the Senator from Idaho [Mr. KEMPTHORNE] was added as a consponsor of S. 2150, a bill to prohibit extension or establishment of any national monument on public land without full compliance with the National Environmental Policy Act and the Endangered Species act, and an express act of Congress, and for other purposes.

SENATE RESOLUTION 303—COMMENDING THE GOVERNMENTS OF HUNGARY AND ROMANIA

Mr. BROWN (for himself and Mr. SIMON) submitted the following resolution; which was considered and agreed to:

S. RES. 303

Whereas on September 16, 1996, ''Treaty of Understanding, Cooperation and Good Neighborliness between Romania and the Republic of Hungary'' was signed by Gyula Horn, Prime Minister of Hungary, and by Nicolae Vacaroiu, Prime Minister of Romania, in Timisoara/Temesvar, Romania;

Whereas this agreement between the two governments is an important step in contributing to the stability of that region and to reconciliation and cooperation among the nations of Central and Eastern Europe;

Whereas this agreement will enhance the participation of both countries in the Partnership for Peace program and will contribute to and facilitate their closer cooperation with the members of the North Atlantic Treaty Organization and the eventual entry of these countries into full NATO participation; and

Whereas this agreement is a further significant step in the process of reconciliation between Hungary and Romania reflects the desire and effort of both countries to improve their economic cooperation, to foster the free movement of people between their countries, to expand military relationships, and to increase cultural and educational cooperation.

It is resolved by the Senate, The Senate—

(1) commends the farsighted leadership shown by both the government of Hungary and the government of Romania in reaching agreement on the Treaty of Understanding, Cooperation and Good Neighborliness signed on September 16, 1996;

(2) commends the frank, open, and reasoned political dialogue between officials of Hungary and Romania which led to the treaty;

(3) commends the two countries for their efforts to foster improved relations in all fields; and

(4) calls upon the President to utilize all available and appropriate means on behalf of the United States to support the implementation of the provisions of the ''Treaty of Understanding, Cooperation and Good Neighborliness between Romania and the Republic of Hungary'' and to promote their efforts for regional cooperation as the best means of bringing these two countries into NATO and to ensure lasting security in the region.

SENATE RESOLUTION 304—APPROVING PROVISIONS OF THE CONGRESSIONAL ACCOUNTABILITY ACT OF 1995

Mr. LOTT (for himself and Mr. GRASSLEY) submitted the following resolution; which was considered and agreed to:

S. RES. 304

Resolved,

SECTION 1. APPROVAL OF REGULATIONS.

(a) IN GENERAL.—The regulations described in subsection (b) are hereby approved, insofar as such regulations apply to employing offices of the Senate and employees of the Senate under the Congressional Accountability Act of 1995 (2 U.S.C. 1301 et seq.) and to the extent such regulations are consistent with the provisions of such Act.

SENATE RESOLUTION 305—RELATIVE TO NATIONAL DUCK CALLING DAY

Mr. PRYOR (for himself, Mr. BUMPERS, Mr. JOHNSTON, Mr. BREAUX, and Mr. FORD) submitted the following resolution; which was considered and agreed to: